



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 161 0215]

Enbridge Inc. and Spectra Energy Corp; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before March 20, 2017.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/enbridgespectraconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “In the Matter of Enbridge Inc. and Spectra Energy Corp File No. 161-0215” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/enbridgespectraconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of Enbridge Inc. and Spectra Energy Corp File No. 161-0215” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of

the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Eric Cochran (202-326-3454), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 16, 2017), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 20, 2017. Write “In the Matter of Enbridge Inc. and Spectra Energy Corp File No. 161-0215” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/enbridgespectraconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

If you file your comment on paper, write “In the Matter of Enbridge Inc. and Spectra Energy Corp File No. 161-0215” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 20, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Enbridge Inc. (“Enbridge”) and Spectra Energy Corp (“Spectra”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Enbridge’s proposed merger with Spectra (the “Merger”).

The Merger, if consummated, will result in Respondent Enbridge having ownership interests in the two closest and likely lowest-cost pipelines that provide or can provide natural gas pipeline transportation from many Deepwater Outer Continental Shelf oil and gas leasing

and exploration blocks (“blocks”) in certain natural gas producing areas in the Gulf of Mexico. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra has an indirect, minority ownership interest in the Discovery Pipeline. The Complaint alleges that, resulting from the Merger, Enbridge will have access to competitively sensitive information of its competitor, the Discovery Pipeline, and gain voting rights over the Discovery Pipeline’s significant capital expenditures, including expansions needed to connect to new wells. Without adequate safeguards, Enbridge could misuse that information and its voting rights, leading to anticompetitive conduct that would make the Discovery Pipeline a less effective competitor or would facilitate coordination in the industry. To remedy these concerns, under the terms of the Proposed Decision and Order (“Order”) contained in the Consent Agreement, Enbridge is required to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline. In addition, all board members appointed by Enbridge or Spectra to the boards of directors overseeing the Discovery Pipeline must recuse themselves from any vote pertaining to the Discovery Pipeline, with limited exceptions.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. The Parties

A. Enbridge

Enbridge is an energy delivery company that operates primarily in the United States and Canada. Its primary business is in pipeline transportation of crude oil; however, it also has

significant natural gas gathering, processing, transportation, and storage assets. Enbridge owns several interconnected natural gas pipelines that export natural gas from the Gulf of Mexico to processing plants in Louisiana.

B. Spectra

Spectra is one of the largest North American pipeline and midstream companies. Spectra predominately focuses on natural gas, providing natural gas gathering, storage, and transportation in the southeastern and northeastern United States and in southeastern Canada. Through a joint venture with Phillips 66 (“Phillips”), Spectra owns an indirect minority interest in the Discovery Pipeline, a natural gas pipeline that transports natural gas from Deepwater areas in the Gulf of Mexico to processing plants in Louisiana.

III. The Proposed Merger

Respondent Enbridge and affiliated companies under its control entered into a merger agreement with Spectra, dated September 5, 2016, pursuant to which Sand Merger Sub, Inc., a newly created direct wholly owned subsidiary of Enbridge, will merge with and into Spectra, with Spectra surviving the Merger. The combined entity will be the largest energy infrastructure company in North America, with a geographically diverse asset portfolio used in the gathering, processing, storage, and transportation of natural gas and the pipeline transportation of crude oil.

The Commission’s Complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the transportation of natural gas from wells in certain natural gas producing areas in the Gulf of Mexico, to processing plants or interconnects with other natural gas pipelines.

IV. The Relevant Markets

The Commission's Complaint alleges that the relevant product market within which to analyze the Merger is natural gas pipeline transportation. Natural gas producers contract with natural gas pipelines to connect to and transport natural gas from wells to processing plants or interconnects with other natural gas pipelines. Even if pipeline transportation rates increased slightly, shippers would continue to use pipelines as no economic or practical alternative to natural gas pipeline transportation exists.

The Commission's Complaint alleges that the relevant geographic markets within which to analyze the Merger are no broader than the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico off the coast of Louisiana (collectively and individually referred to as "Gulf Producing Areas"). Other transportation methods for natural gas in the Gulf Producing Area are significantly more costly, less reliable, and potentially more hazardous than the parties' pipelines.

V. Market Structure

The Commission's Complaint alleges that Enbridge and Spectra own interests in the two pipelines closest to wells drilled in certain blocks in the Gulf Producing Areas, including blocks that lie between the pipelines. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra holds an indirect minority ownership interest in the Discovery Pipeline, via its 50-50 joint venture with Phillips (DCP Midstream, LLC ("DCP")), which in turn has an effective 36.1 percent limited partner interest in DCP Midstream Partners, LP ("DPM"). DPM owns a 40 percent interest in the Discovery Pipeline; Williams Partners L.P. owns the majority interest (60 percent) in the Discovery Pipeline and is its operator.

The Commission's Complaint alleges that the length of pipeline needed to connect an existing pipeline to a well is a major factor in determining the overall cost for the pipeline to connect to the well. Thus, more distant pipelines likely face higher costs to connect to wells, resulting in higher natural gas pipeline transportation prices for natural gas producers. Where the Walker Ridge Pipeline and the Discovery Pipeline are a producer's nearest options – as they are for many blocks in the Gulf Producing Areas – they each likely could expand to connect to the producer's well for the lowest costs. As such, the Walker Ridge Pipeline and the Discovery Pipeline are the two pipelines most likely to compete successfully for projects in certain blocks in the Gulf Producing Areas.

VI. Effects of the Merger

While Spectra does not outright own the Discovery Pipeline or hold a majority interest in it (or operate it), through its indirect, minority ownership interest in DPM, Spectra has access to competitively sensitive information of the Discovery Pipeline and significant voting rights. This relationship creates two primary competitive concerns after the Merger. First, Enbridge-appointed directors will vote on the Discovery Pipeline's significant capital expenditures, which likely will include future expansions needed to connect to wells. Enbridge will have the incentive and ability to reduce the competitiveness of Discovery Pipeline bids for projects for which the parties' pipeline are the closest and lowest-cost options.

Second, Enbridge will have access to the Discovery Pipeline's competitively sensitive information. When its Walker Ridge Pipeline competes with the Discovery Pipeline, Enbridge may use this competitively sensitive information to raise transportation costs for natural gas producers. The exchange of information also may increase the likelihood of tacit or explicit coordination between the Walker Ridge Pipeline and the Discovery Pipeline.

VII. Entry Conditions

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Merger. Barriers to entry are significant. Building pipeline underwater is an expensive and lengthy process, often taking several years from the initial proposal to the end of construction.

VIII. The Agreement Containing Consent Order

The proposed Order resolves the anticompetitive concerns described above by requiring that (1) Enbridge erect firewalls to limit its access to non-public information relating to the Discovery Pipeline, and (2) all representatives appointed by Enbridge or Spectra to the DCP or DPM boards of directors recuse themselves from any vote pertaining to the Discovery Pipeline, with two limited exceptions. First, Enbridge's representatives may vote on initiatives to expand the Discovery Pipeline beyond natural gas pipeline services in the Gulf of Mexico. This provision ensures that Enbridge does not have to participate in business ventures unrelated to the Discovery Pipeline's current business. Second, Enbridge's representatives may participate in votes to change DPM's ownership interest in the Discovery Pipeline. The use of firewalls and recusal provisions is appropriate because the competitive concerns arise from a discrete overlap that constitutes a relatively small portion of DCP's and DPM's overall physical footprints and business portfolios.

The proposed Order allows the Commission to appoint a monitor. The Commission has appointed Robert Ogle, who currently is associated with Claro Group LLC. Mr. Ogle will help ensure the effectiveness of the firewall provisions and ongoing compliance with the Order. The Commission routinely appoints monitors for orders involving firewall provisions. Mr. Ogle will

serve for a 5-year term, but the Commission may extend or modify the term as appropriate. The Order will have a term of 20 years.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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